

# The Orissa Gazette



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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 12th March 2007

No. 2261—Ij/ 1(B) - 18/04 - L. E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th February 2007 in I.D. Case No. 43 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Berger Paints (India) Ltd., Bhubaneswar and its workman Shri Khadala Panigrahi was referred for adjudication is hereby published as in the Schedule below:

#### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT  
BHUBANESWAR  
INDUSTRIAL DISPUTE CASE NO.43 OF 2004  
Dated the 15th February 2007

*Present :*

Shri S. K. Mohapatra, o.s.j.s. (Jr. Branch),  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The Management of .. First Party—Management  
M/s Berger Paint (India) Ltd.,  
Bhubaneswar.

*And*

Their Workman .. Second Party—Workman  
Shri Khadala Panigrahi.

*Appearances :*

For the First Party — Management .. Shri J. B. Patnaik, Advocate  
Shri B. K. Pradhan, Advocate  
Shri S. Patnaik, Advocate

For the Second Party—Workman himself .. Shri Khadala Panigrahi

### AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of M/s Berger Paint (India) Ltd., Bhubaneswar and their workman

Shri Khadala Panigrahi under Notification No. 8007-L.E., dated the 18th July 1985 vide memo No. 4974(5)-L.E., dated the 14th June 2004 for adjudication by this Court.

2. The terms of reference by the State Government is as follows:—

"Whether the termination of services of Shri Khadala Panigrahi, ex-Trolley Puller by the management of M/s Berger Paints (India) Ltd. (Area Sales Office), Gopabandhu Chhak, Bhubaneswar with effect from the 17th April 1992 is legal and/or justified? If not, what relief is Shri Panigrahi entitled to?"

3. Shorn of all unnecessary details, the case of the workman, so far as it relates to the present case, is as follows :

From his childhood the workman was working as Trolley Rickshaw Puller. When he grew up he worked as a Trolley Rickshaw Puller under the management of M/s Berger Paint (India) Ltd., at their godown near Gopabandhu Chhak, Bhubaneswar. The workman was working under the management regularly but when one Suresh Sahani came and interfered with his work and influenced the management, the management removed the workman from his service with effect from the 27th April 1992 without any reason. The provisions under Section 25 - F of the Industrial Disputes Act, 1947 were not observed when the workman was removed from his service. On these averments, the workman has prayed for relief to him in accordance with the provisions of the Industrial Disputes Act, 1947.

4. The management has denied that the workman had ever worked under their management at any time. The management has stoutly denied the claim of the workman and has contended that the claim of the workman is totally misconceived and not maintainable according to law. The management had never appointed the workman as a Trolley Puller and therefore, there was no question of terminating his job. On these averments the management has sought for dismissal of the case.

5. On the aforesaid averments of the parties, the following issues have been framed :—

ISSUES

(i) "Whether the termination of services of Shri Khadala Panigrahi, ex-Trolley Puller by the management of M/s Berger Paints (India) Ltd. (Area Sales Officer), Gopabandhu Chhak, Bhubaneswar with effect from the 27th April 1992 is legal and/or justified ?

(ii) If not, what relief is Shri Panigrahi entitled to ?"

6. Issue No. (i)—Deciding the question as to whether the workman was working under the management of the Company as a Trolley Rickshaw Puller is of paramount importance.

The workman who examined himself as W. W. 1 in his evidence has stated that since 1984 he was working under the management as Rickshaw Puller at the local godown of the management at Bhubaneswar and he continued in his job as such till the year 1992. According to W.W. 1, he was being paid regularly by the management on the basis of the work done by him. According to W.W. 1, in the year 1992 the Divisional Sales Manager of the management lodged an F.I.R. against him and since then he has been disengaged from his service without adoption of any due procedure of law. In his cross-examination W.W. 1 has admitted that he has not filed any document regarding his employment as Trolley Puller under the management. W.W. 1 has also admitted that the management had not given anything in writing to disengaged him from employment. Save and except the oral testimony of the workman W.W. 1 that he was working as Trolley Puller under the management, there is absolutely no other material on record to substantiate such a claim. The workman has not proved even a scrap of paper to show that he was ever under the employment of the management. Although W.W. 1 has claimed that he was being paid wages by the management regularly on the basis of work done by him, there is absolutely no evidence to that effect. No documentary evidence

has been brought forth to prove that the workman was receiving any wages from the management in any shape for any period. W.W.2 in his evidence has stated that he along with the workman was working as Trolley Puller under the management. In his cross-examination, W.W. 2 has admitted that he had not seen any document regarding employment of the workman by the management. According to W.W. 2 many Trolley Rickshaw Pullers used to park their Trolley Rickshaw in front of the godown of the management and that when the Manager of godown was engaging any of the Trolley Pullers of his choice according to the need for his work, such Trolley Puller was being engaged. W.W.2 could not say the total amount of wages earned by the workman. From such evidence of W.W.2 it is rather clear that the workman was only a Trolley Rickshaw Puller who was parking his Rickshaw near the godown of the management and that whenever the Manager of the management was requiring sending of any goods from the godown, he was engaging any Trolley Rickshaw Puller of his choice for the limited purpose on payment of hauling charges. Thus, there is absolutely no evidence on record to show that the workman was ever working under the employment of the management. Hence, the second party cannot be termed as a workman of the first party management.

7. *Issue No. (ii)*— Now the question arises as to whether the services of the second party had been terminated with effect from the 27th April 1992 and as to whether such termination was legal or justified. Since there is absolutely no evidence that the second party was a workman under the first party management, the question of his termination with effect from the 27th April 1992 does not arise at all. In absence of any employment ever done by the second party under the first party, the question of termination can only be an imaginary one. There being neither any employment of the second party nor any termination of him from any job by the first party, the question of legality or otherwise does not arise at all. Both the issues are answered accordingly.

8. Since the second party never worked as a workman under the first party management, the question of giving any relief to the second party does not arise and he is not entitled to any relief whatsoever under any provisions of the Industrial Disputes Act, 1947.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA  
15-2-2007  
Presiding Officer  
Labour Court, Bhubaneswar

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15-2-2007  
Presiding Officer  
Labour Court, Bhubaneswar

By order of the Governor  
N. C. RAY  
Under-Secretary to Government